

The above issue is not found in K.S.A. 44-534a as one allowing appeal from a preliminary hearing. The respondent alleges under K.S.A. 44-551, as amended by S.B. 59

(1995), that the Administrative Law Judge exceeded his jurisdiction in ordering respondent to pay one-half (½) of the cost of the deposition of Dr. Blaty.

It is the custom in workers compensation cases, during litigation, that the party requesting the deposition of a medical health care provider pay the fee charged by that health care provider for that deposition. In this instance claimant objected, as both respondent and Workers Compensation Fund used the claimant's expert in proving their own case in chief. This action, by both the respondent and the Workers Compensation Fund, substantially increased the amount of time required to take the deposition, thus increasing claimant's cost from a one (1) hour expected fee of \$300.00 to a two (2) hour actual fee of \$600.00. In reviewing the transcripts of Dr. Blaty, we note that claimant spent only approximately thirteen (13) pages in its direct examination of the doctor. The entire transcript ran eighty-two (82) pages with the majority of the questioning being done by counsel for the respondent and the Kansas Workers Compensation Fund.

K.S.A. 44-510(a)(4)(A) states:

"In every case, all fees, transportation costs, charges under this section and all costs and charges for medical records and testimony shall be subject to approval by the director and shall be limited to such as are fair, reasonable and necessary. The schedule of maximum fees shall be reviewed annually by the director to assure that the schedule is current, reasonable and fair."

K.S.A. 44-510, which establishes and dictates the method of enforcement of the medical fee schedule, grants the director the right to approve all costs associated with testimony. Reason dictates the ability to approve charges associated with testimony would involve more than simply reviewing the amount being charged by the medical provider. It should also include the ability to assess the charges against the various parties involved in the actions. In this instance, the Administrative Law Judge, in ordering the respondent to pay one-half (½) of the fee of Dr. Blaty for his deposition did not exceed his jurisdiction and, as such, this matter would not be appealable to the Appeals Board pursuant to K.S.A. 44-551.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Administrative Law Judge did not exceed his jurisdiction in ordering respondent to pay one-half (½) of the deposition costs of Dr. Blaty. Respondent's Application for Review should be, and is hereby, dismissed and the Order of Administrative Law Judge John D. Clark dated July 18, 1995, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of October, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Robert R. Lee, Wichita, Kansas
Stephen A. McManus, Wichita, Kansas
Cortland Q. Clotfelter, Wichita, Kansas
John D. Clark, Administrative Law Judge
Philip S. Harness, Director